

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
<b>CONSUMERS ENERGY COMPANY</b>	)	
for approval pursuant to MCL 460.6q of the	)	Case No. U-18252
divestment of its B.C. Cobb and J.R. Whiting electric	)	
generating plants.	)	
_____	)	

At the September 15, 2017 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman  
Hon. Norman J. Saari, Commissioner  
Hon. Rachael A. Eubanks, Commissioner

**ORDER APPROVING SETTLEMENT AGREEMENT**

On April 25, 2017, Consumers Energy Company (Consumers) filed an application pursuant to MCL 460.6q, with supporting testimony and exhibits, requesting approval to divest the majority of the B.C. Cobb (Cobb) and J.R. Whiting (Whiting) electric generating plants to two wholly-owned subsidiaries of Forsite Development Incorporated (Forsite): Muskegon Investments I, LLC, and Monroe Investments I, LLC. According to Consumers' application, Forsite's subsidiaries will undertake abatement, demolition, and dismantling activities (AD&D) at Cobb and Whiting to remove the coal-fired generation equipment and structures and will undertake certain predetermined and described environmental remediation actions. Thereafter, Forsite's subsidiaries will redevelop the properties for other, non-utility purposes.

A prehearing conference was held on May 31, 2017, before Administrative Law Judge Dennis W. Mack. Consumers and the Commission Staff (Staff) participated in the proceedings. An evidentiary hearing was held on July 26, 2017, at which Consumers bound-in the testimony and exhibits of two witnesses. Subsequently, the parties submitted a settlement agreement resolving all issues in the case.

According to the terms of the settlement agreement, attached as Exhibit A, the parties recommend that the Commission approve Consumers' request to divest portions of the Cobb and Whiting plants as set forth in the real estate purchase and sale agreements for each of the units. The parties agree that, to the extent that Forsite's subsidiaries complete the AD&D and environmental remediation work pursuant to the respective purchase and sales agreements, Consumers' customers will not pay more than \$62,544,500 in their electric rates for the AD&D and remediation work. The parties further agree that if Forsite's subsidiaries default on one or both agreements, Consumers may self-perform the remaining AD&D and remediation work, or engage a different buyer, at or below \$62,544,500 without further approval of the Commission. If the AD&D and remediation costs to Consumers or the new buyer exceed \$62,544,500, the parties agree that electric rates shall not increase unless the company first requests and receives Commission approval.

The parties also agree that Consumers will charge its divestment costs to the depreciation reserve for the company's remaining steam plants, consistent with the May 14, 2015 order in Case No. U-17653, and that Consumers will include the divestment costs in the calculation of depreciation rates in the company's next depreciation case. Accordingly, the Staff agree not to contest the divestment cost of \$62,544,500 in Consumers' next depreciation case provided that the costs are incurred consistent with the terms of the settlement agreement in this case.

In addition, the parties agree that the Commission should find that pursuant to MCL 460.6q(7): (1) the transaction will not have an adverse impact on the rates of the customers affected by the divestment; (2) the transaction will not have an adverse impact on the provision of safe, reliable, and adequate energy service in Michigan; (3) the transaction will not result in the subsidization of a non-regulated activity of any new entity through the rates paid by Consumers' customers; (4) the transaction will not impair Consumers' ability to raise necessary capital or maintain a reasonable capital structure; and (5) the transaction is consistent with public policy and interest.

According to the settlement agreement, Consumers performed a due diligence investigation in connection with the bidding and selection of Forsite's subsidiaries as the buyer and that, as a result of this investigation, Consumers is unaware of any conflict of interest between the company, Amec Foster Wheeler (the company engaged to conduct the study to determine the feasibility and cost comparison for divestment of the Cobb, Whiting, and J.C. Weadock sites), and the buyer.

Finally, the parties agree that Consumers should be required to provide quarterly and annual reports regarding the status of the AD&D and remediation work, as well as the disbursements to Forsite's subsidiaries from the escrow established in the purchase and sale agreements.

The Commission finds that the settlement agreement is reasonable and in the public interest, and should be approved.

THEREFORE, IT IS ORDERED that:

A. The settlement agreement, attached as Exhibit A, is approved.

B. The purchase and sales agreements shall not adversely impact the rates of customers affected by the divestment; shall not adversely impact the provision of safe, reliable, and adequate energy service in Michigan; shall not subsidize the non-regulated activity of any new entity through the rates paid by the company's customers; shall not impair the company's ability to raise necessary capital or maintain a reasonable capital structure; and are consistent with public policy and interest.

C. Pursuant to MCL 460.6q, Consumers Energy Company's request to divest portions of its B.C. Cobb and J.R. Whiting electric generating plants is approved, subject to the terms of the settlement agreement.

D. Consumers Energy Company shall file quarterly and annual reports, as set forth in the settlement agreement. Consumers Energy Company shall file its first quarterly report within 30 days of the date of this order, and quarterly thereafter. At the same intervals, Consumers Energy Company shall file public versions of these reports in this docket.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov) and to the Michigan Department of the Attorney General – Public Service Division at [pungpl@michigan.gov](mailto:pungpl@michigan.gov). In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General – Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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Sally A. Talberg, Chairman

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Norman J. Saari, Commissioner

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Rachael A. Eubanks, Commissioner

By its action of September 15, 2017.

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Kavita Kale, Executive Secretary

STATE OF MICHIGAN  
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 CONSUMERS ENERGY COMPANY )  
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Case No. U-18252

**SETTLEMENT AGREEMENT**

Pursuant to MCL 24.278 and Rule 431 of the Michigan Administrative Hearing System's Rules of Practice and Procedure before the Michigan Public Service Commission ("MPSC" or "Commission"), Mich Admin Code, R 792.10431, the undersigned parties agree as follows:

WHEREAS, on April 25, 2017 Consumers Energy Company ("Consumers Energy" or "the Company") filed an application pursuant to MCL 460.6q requesting approval of the Company's divestment of the majority of its B.C. Cobb ("Cobb") and J.R. Whiting ("Whiting") plants to two subsidiaries of Forsite Development Incorporated ("Forsite"), Muskegon Investments I, LLC and Monroe Investments I, LLC. The respective Purchase and Sale Agreements ("PSA") between Consumers Energy and Forsite's subsidiaries, together with the other transaction documents (collectively "the Agreements"), require Forsite, through its subsidiaries, to undertake abatement, demolition, and dismantling ("AD&D") activities associated with the removal of the coal-fired plant generation equipment and structures at the Cobb and Whiting sites and to undertake certain predetermined and described environmental remediation actions. Consumers Energy filed testimony and exhibits in support of its request concurrently with its application.

WHEREAS, the initial prehearing conference in this proceeding was held on May 31, 2017 before Administrative Law Judge ("ALJ") Dennis W. Mack. The parties to the case are

Consumers Energy and the Commission Staff. The ALJ conducted an evidentiary hearing on July 26, 2017 at which the testimony and exhibits of Consumers Energy witnesses Paul Gire and Andrew Denato were bound into the record without the need for cross examination.

NOW THEREFORE, for purposes of settlement of Case No. U-18252, the undersigned parties agree as follows:

1. The parties agree that the Commission should approve Consumers Energy's request to divest portions of the Cobb and Whiting plants as set forth in the Real Estate Purchase and Sale Agreements (collectively "Agreements") for each of the units (attached to the Company's Application in this case as Exhibits A-4 (PJG-4) and A-5 (PJG-5)). The total divestment price to be paid by Consumers Energy to Forsite's subsidiaries under the Agreements is an amount up to \$62,544,500. Consumers Energy agrees that, to the extent the AD&D and remediation work is completed by Forsite's subsidiaries as set forth in the Agreements, the Company's customers will not pay through their electric rates more for the AD&D and remediation work than the total amount of \$62,544,500 for the completed contract or, if the contract is not fully completed, the amount corresponding to the level of work that has been completed pursuant to the terms of the Agreement. In the event that Forsite's subsidiaries default on one or both of the Agreements, Consumers Energy may self-perform the remaining AD&D or remediation work or engage a different buyer to complete the work at or below the \$62,544,500 without further approval of the Commission. If the cost to Consumers Energy or a new buyer will exceed \$62,544,500 Consumers Energy agrees that customers will not pay through electric utility rates more for the AD&D and remediation costs unless the Company first requests and receives Commission approval for recovery of any additional AD&D and remediation costs beyond the \$62,544,500 contemplated in the Agreements.

2. Consistent with the Commission's May 14, 2015 Order Approving Settlement Agreement in Case No. U-17653, Consumers Energy shall charge divestment costs to the depreciation reserve for the Company's remaining steam plants. Consumers Energy will include the divestment costs in the calculation of depreciation rates in its next electric and common plant depreciation case. To the extent the divestment costs included in Consumers Energy's next electric and common plant depreciation case are consistent with the terms of this settlement agreement, Staff agrees that it will not contest the divestment cost of \$62,544,500 to be paid by Consumers Energy to Forsite's subsidiaries under the Agreements in calculating new depreciation rates in that case.

3. The parties agree that the Commission should find, pursuant to MCL 460.6q(7) that:

- a. The transaction will not have an adverse impact on the rates of the customers affected by the divestment,
- b. The transaction will not have an adverse impact on the provision of safe, reliable, and adequate energy service in Michigan,
- c. The transaction will not result in the subsidization of a nonregulated activity of any new entity through the rates paid by Consumers Energy's customers,
- d. The transaction will not impair Consumers Energy's ability to raise necessary capital or maintain a reasonable capital structure, and
- e. The transaction is consistent with public policy and interest.

4. Consumers Energy represents that it has performed a due diligence investigation in connection with the bidding and selection of Forsite's subsidiaries as the buyer in this transaction and that, as a result of its due diligence investigation, Consumers Energy is unaware



of any conflict of interest between the Company, Amec Foster Wheeler (the company engaged to conduct the study to determine the feasibility and cost comparison for divestment of the Cobb, Whiting, and Weadock sites), and the buyer (Forsite or its subsidiaries).

5. Consumers Energy shall file a report annually with the Commission in this docket that includes the following information:

- a. Beginning balance of the escrow for the period.
- b. Disbursements by the escrow agent, including the date and amount of disbursement
- c. A description of the AD&D milestones and/or remedial milestones completed by Forsite's subsidiaries or, if not completed, the percentage of completion required to be achieved by Forsite's subsidiaries pursuant to the AD&D milestones and active remediation milestones as of the date of the respective requisition form. Consumers Energy will provide the Commission with notification of any missed AD&D or remedial milestone and will provide the Commission with correspondence between Consumers Energy and Forsite or its subsidiaries pertaining to the meeting or defaulting of said milestones as soon after the incident as possible.
- d. The report should contain items Consumers Energy has identified that:
  - i. Are ineligible for reimbursement for any reason, including the assertion that the referenced milestone has not been satisfied;
  - ii. Relate to work, obligations, services, materials, equipment, supplies, and/or labor performed in a materially or substantially defective manner to the extent that Consumers Energy becomes aware of such items; however this

sub-subparagraph shall not be construed to create an affirmative obligation for Consumers Energy to track such items when, under the Agreements, such items are within the day-to-day responsibility of Forsite's subsidiaries;

iii. Are not otherwise in material compliance with applicable law, the PSA or the Post Closing Agreements ("PCA"); and/or

iv. Are not otherwise payable to Owner due to Owner's default under the PCA, PSA and/or the Environmental Indemnity.

e. Any Termination Notice or a Material Default Notice.

f. Other expenses incurred by the escrow.

g. The ending balance of the escrow for the period.

6. Consumers Energy shall file a quarterly report providing which milestones have been met in that quarter, which milestones remain to be completed, and the monies disbursed related to the specific milestones met in that quarter.

7. This settlement is entered into for the sole and express purpose of reaching a compromise among the parties. All offers of settlement and discussions relating to this settlement are, and shall be considered, privileged under MRE 408. If the Commission approves this Settlement Agreement without modification, neither the parties to this Settlement Agreement nor the Commission shall make any reference to, or use, this Settlement Agreement or the order approving it, as a reason, authority, rationale, or example for taking any action or position or making any subsequent decision in any other case or proceeding; provided, however, such references may be made to enforce or implement the provisions of this Settlement Agreement and the order approving it.

8. This Settlement Agreement is based on the facts and circumstances of this case and is intended for the final disposition of Case No. U-18252. So long as the Commission approves this Settlement Agreement without any modification, the parties agree not to appeal, challenge, or otherwise contest the Commission order approving this Settlement Agreement. The parties agree and understand that this Settlement Agreement does not limit any party's right to take new and/or different positions on similar issues in other administrative proceedings, or appeals related thereto.

9. This Settlement is not severable. Each provision of the Settlement Agreement is dependent upon all other provisions of this Settlement Agreement. Failure to comply with any provision of this Settlement Agreement constitutes failure to comply with the entire Settlement Agreement. If the Commission rejects or modifies this Settlement Agreement or any provision of the Settlement Agreement, this Settlement Agreement shall be deemed to be withdrawn, shall not constitute any part of the record in this proceeding or be used for any other purpose, and shall be without prejudice to the pre-negotiation positions of the parties.

10. The parties agree that approval of this Settlement Agreement by the Commission would be reasonable and in the public interest.

11. The parties agree to waive Section 81 of the Administrative Procedures Act of 1969 (MCL 24.281), as it applies to the issues resolved in this Settlement Agreement, if the Commission approves this Settlement Agreement without modification.

12. This Settlement Agreement may be executed in multiple counterparts.

WHEREFORE, the undersigned parties respectfully request the Commission to approve this Settlement Agreement on an expeditious basis and to make it effective in accordance with its terms by final order.

MICHIGAN PUBLIC SERVICE  
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